FILE COPY

FILED
DEC 3 1948
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

..... Term, 1948.

No. 445

KING DAVID, and WILLIAM TALMADGE SPEARS,
Petitioners,

vs.

GEORGE A. SUTTON, Executor of the Estate of Dr. Mansfield L. Spears, Deceased, EVA MAE SPEARS, as Special Administratrix of the Estate of Dr. Mansfield L. Spears, Deceased, and Individually, and COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO COURT OF APPEALS, SIXTH CIRCUIT.

I. H. SPEARS,
Attorney for Petitioners,
73 W. Bellevue Drive,
Pasadena 2, California.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

SUBJECT INDEX.

PAGE

Petition for Writ..... 1
(a) Summary Statement 1
(b) Reasons for Allowance of Writ..... 3
(c) Questions Presented 5
(d) Argument and Authorities..... 7

Cases Cited.

Art. III, Sec. 2, Constitution of the United States. 2, 3, 4, 5, 6
Judicial Code, Section 24(1), 28 USCA Sec. 41(1).....
.....2, 3, 4, 5, 6, 8
Judicial Code, Section 240 Amend., 28 USCA 347, (a).. 4
Judicial Code, Section 51, 28 USCA Section 112..... 5, 6
Judicial Code, Section 262, 28 USC Sec. 377..... 4
Clark v. Allen, *et al.*, 331 U. S. 503, Cer. granted 329 U. S. 691, 706, and 707.....3, 5, 8
Furness, Withy Co., Lt'd vs. Yang Tsz Ins. Assn. Lt'd, 242 U. S. 430..... 4
Gung vs. Cooley, 281 U. S. 90, 98..... 4
In re Church Building Corp., 229 U. S. 24, 57 S. Ct. 88, 81 L. ed. 16..... 5
Lou Ow Bew, Petitioner, 141 U. S. 583, Certiorari granted 3
Markham vs. Allen, *et al.*, 326 U. S. 490, 66 S. Ct. 296, 325 U. S. 846.....3, 5, 8
Southern Power Co. v. Pub. Serv. Co., 263 U. S. 508... 3
U. S. Beatty, 232 U. S. 463, 34 S. Ct. 392, 58 L. Ed. 686. 5

Supreme Court of the United States

.....Term, 1948.

No. .....

KING DAVID, and WILLIAM TALMADGE SPEARS,
Petitioners,

vs.

GEORGE A. SUTTON, Executor of the Estate of Dr. Mansfield L. Spears, Deceased, EVA MAE SPEARS, as Special Administratrix of the Estate of Dr. Mansfield L. Spears, Deceased, and Individually, and COMMUNITY NATIONAL BANK OF PONTIAC, MICHIGAN,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO COURT OF APPEALS, SIXTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Summary Statement of Matter Involved.

(A.) This is a suit of a civil nature in equity brought by the sole heir of Mansfield L. Spears, deceased, and King David, a legatee under the will of the decedent, each of whom is a citizen of the state of Florida, and the state of

New Jersey, respectively, against the defendants, citizens of the state of Michigan and represent the estate of Mansfield L. Spears, deceased, in the course of administration in the probate court of Oakland County, Michigan, in the federal District Court, to establish their claim against said estate, under the Constitution and laws of the United States, Article III, Section 2, and Section 24(1), 28 USCA Section 41(1), of the Judicial Code.

The subject matter consists of cash money and real estate in the state of Michigan aggregating $46,000.00 (Transcript of record pages 1 to 11).

Petitioners wish to have their respective claims or interest established by judgment of the Federal Court; William Talmadge Spears whose name is omitted from the will, and who under the laws of Michigan, inherits as if the decedent had died intestate; and King David whose interest depends upon the meaning of the will as determined by this court; the petitioners asked, determination of the interests of petitioners, declaration of heirship, interpretation of the will, quieting of title, and an accounting (Transcript pages 1 to 11).

This cause is grounded on the applicability of the Federal Constitution, Article III, Section 2, and the Laws of Congress, Judicial Code, Section 24(1), 28 USCA Section 41(1).

Petitioners allege this cause involves grave questions of vital importance to the public and these petitioners.

Petitioners allege the decree entered in this cause by the Court of Appeals Sixth Circuit on the 19th day of October 1948 deprives petitioners of their property without due process of law, and the equal protection of the law, and freedom of contract, contrary to the Federal Constitution

and laws of the United States (Transcript pages 1 to 11, 20 to 23, 32 to 36).

Petitioners allege this is a controversy within the meaning of Article III, Section 2 Constitution of the United States, and Judicial Code, Section 24(1), 28 USCA 41(1). (Markham vs. Allen *et al.*, 326 U. S. 490, Certiorari granted, 325 U. S. 846.)

Reasons Relied Upon for the Allowance of the Writ.

(a) This cause presents Federal Constitution, and Federal Law questions affecting the property, rights, privileges, and immunities guaranteed to citizens of the United States by the Constitution and laws of the United States.

(b) The decision of the Court of Appeals rendered on the 19th day of October 1948 in this cause should be reversed for the reason, we submit, that it is clearly erroneous and not in accord with the principles of applicable decisions of this court, in the following cases:

Lou Ow Bew, Petitioner, 141 U. S. 583, Certiorari granted,

Southern Power Co. vs. Pub. Serv. Co., 263 U. S. 508,

Markham vs. Allen, *et al.*, 326 U. S. 490, Certiorari granted, 325 U. S. 846,

Clark vs. Allen, *et al.*, 331 U. S. 503, Cer. granted, 329 U. S. 691, 706, and 707;

(c) The Court of Appeals Sixth Circuit also clearly erred, we submit, in failing to reverse the judgment of the District Court and requiring the defendants to answer, and, in numerous other respects as set forth in the transcript of record, pages 32 to 36, and page 39.

(d) In the interest of brevity (Rule 38 par. 2, Furness, Withy Co., Lt'd vs. Yang Tsz Ins. Assn. Lt'd, 242 U. S. 430), petitioners do not at this time set forth all of the points which will be urged at the argument on the merits of this cause, should the writ be granted, nor of the contentions in support of such points; but in order to comply with the rule of this court requiring that all issues upon which decision is requested be presented in the petition for Certiorari (Gung vs. Cooley, 281 U. S. 90, 98), petitioners here refer to and incorporate into this petition all of the matters shown on pages 1 to 11, 20 to 23, and 32 to 36, and 39 of the transcript of record with the same force and effect as if set out herein in full.

(e) Petitioners allege this Court has jurisdiction to review the judgment or decree of the Court of Appeals Sixth Circuit rendered in this cause on the 19th day of October 1948 by virtue of the Constitution and laws of the United States, Article III, and Judicial Code, Sec. 24(1), (and Judicial Code Sec. 240 Amend.) 28 USCA 347, (a) "In every case, civil or criminal, in a Circuit Court of Appeals, * * *, it shall be competent for the Supreme Court of the United States, upon petition of any party thereto, whether government or other litigant, to require by certiorari, either before or after judgment or decree by such lower court that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with the like effect, as if the cause had been brought there by unrestricted appeal." Also, 28 USC Sec. 377, (Judicial Code Sec. 262) "Power to issue writs—" "The Supreme Court shall have power to issue all writs not specifically provided for by statute, which may be necessary for the exercise of its jurisdiction, and agreeable to the usages and principles of law."

In re Church Building Corp., 229 U. S. 24, 57 S. Ct. 88, 81 L. ed. 16.

U. S. Beatty, 232 U. S. 463, 34 S. Ct. 392, 58 L. ed. 686;

(f) Plaintiffs-petitioners allege that the jurisdiction of this court to determine this cause on review, and the question of jurisdiction of the Federal Courts, inferior to this court, in this class of cases are put at rest, and settled by this Court's decision in Markham vs. Allen, *et al.*, 326 U. S. 490, 66 S. Ct. 296, 90 L. ed. 256, Cer. granted, 325 U. S. 846, and the same principles reaffirmed by this court in Clark vs. Allen, *et al.*, 331 U. S. 503, Certiorari granted, 329 U. S. 691, 706, 707.

Questions Presented.

I.

Has the Federal District Court jurisdiction under Article III, Section 2, Constitution of the United States, and Judicial Code, Section 24(1), 28 USCA Section 41 (1), and Judicial Code, Section 51, 28 USCA Section 112, under allegation of Diversity of citizenship, and the amount involved is in excess of $3,000.00, exclusive of interest and costs, to (a) determine the interest of claimants, legatees, devisees, heirs, or creditors in and to an estate in course of administration in the probate court of the state where petitioners seek only the establishment of their claims and do not seek to take possession of property from the state court? (b) To determine heirship? (c) To quiet title to the land described in the complaint? (d) To require an accounting by the defendants for the purpose of adjudicating the right and interest of plaintiffs, petitioners?

II.

Did the District Court err in sustaining motions to dismiss, and dismissing with prejudice?

III.

Did the Court of Appeals Sixth Circuit commit error in affirming the judgment of the District Court?

IV.

Should a Federal Court decline to hear the issues in a case grounded on Article III of the Constitution of the United States, and Judicial Code, Section 24(1), 28 USCA Section 41 (1), and Judicial Code, Section 51, 28 USCA Section 112?

V.

Has the Supreme Court of the United States jurisdiction, power and authority to determine by writ of certiorari, in its appellate capacity, the actions of the District Court, and the Court of Appeals for the Sixth Circuit in a cause grounded on Article III of the Constitution of the United States, and Judicial Code, Section 24(1), 28 USCA Section 41 (1), and Judicial Code, Section 51, 28 USCA Section 112?

VI.

Where a void judgment is set up in a motion to dismiss, may such judgment be attacked by motion to strike by parties whose property rights are affected by such void judgment in violation of the rights, privileges and immunities guaranteed to citizens of the United States by the Constitution and laws, and the due process of law clause, and the equal protection of the law provisions of the Federal Constitution and laws?

Wherefore, your petitioners respectfully pray that a Writ of Certiorari be issued out of and under the seal of

this court directed to the United States Court of Appeals for the Sixth Circuit, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be named therein, a transcript of the record and proceedings herein and that the decree of the Court of Appeals for the Sixth Circuit be reversed by this Honorable Court, and that your petitioners have such other and further relief in the premises as to this Honorable Court may seem meet and just.

I. H. SPEARS,
O. H. SPEARS,
73 W. Bellevue Dr.,
Pasadena 2, California.

State of Michigan, }
County of Wayne. } ss.:

I. H. SPEARS of lawful age and being duly sworn, on oath says, the allegations and statement contained in the foregoing petition for writ of certiorari are true and correct.

I. H. SPEARS.

Subscribed and sworn to before me
this 11th day of November 1948.
W. D. Morison, Jr.,
Notary Public in and for Wayne County, Michigan.
(Seal) My Commission expires Jan. 24, 1949.

Argument and Authorities.

The Supreme Court of the United States has Appellate jurisdiction to issue Writ of Certiorari in all cases involving a construction of the Constitution and laws of the United States.

On certiorari the Supreme Court of the United States sustained the jurisdiction of the District Court, 66 S. Ct. 296, on the ground that the action was of a kind within the equity jurisdiction of the English Court of Chancery in 1789, and hence vested in the District Court by the Judiciary Act of 1789, now Judicial Code, Section 24(1) thereof, 28 USCA Section 41(1), giving equity jurisdiction to the District Courts.

Markham vs. Allen, *et al.*, 326 U. S. 490, Cer. granted 325 U. S. 846;

Clark vs. Allen, *et al.*, 331 U. S. 503, Cer. granted, 329 U. S. 691, 706, 707;

Petitioners, respectfully submit that under the record in this cause, the allegations of this petition, and the authorities cited, this Honorable Court should grant the Writ of Certiorari herein prayed.

I. H. SPEARS,
Attorney for Petitioners,
73 W. Bellevue Dr.,
Pasadena 2, California.